



EL PASO BAR JOURNAL

An Update of Events and Information

June 2015

The Lone Star Republic's Supreme Court
Wove the Fabric of Texas Law from the Threads of Three
Competing Legal Traditions
Part 3: The Scotch-Irish, Born Fighting

BY DAVID A. FURLOW

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SPOTLIGHT ON AN EL PASO LAWYER

LEILA SAFI HOBSON

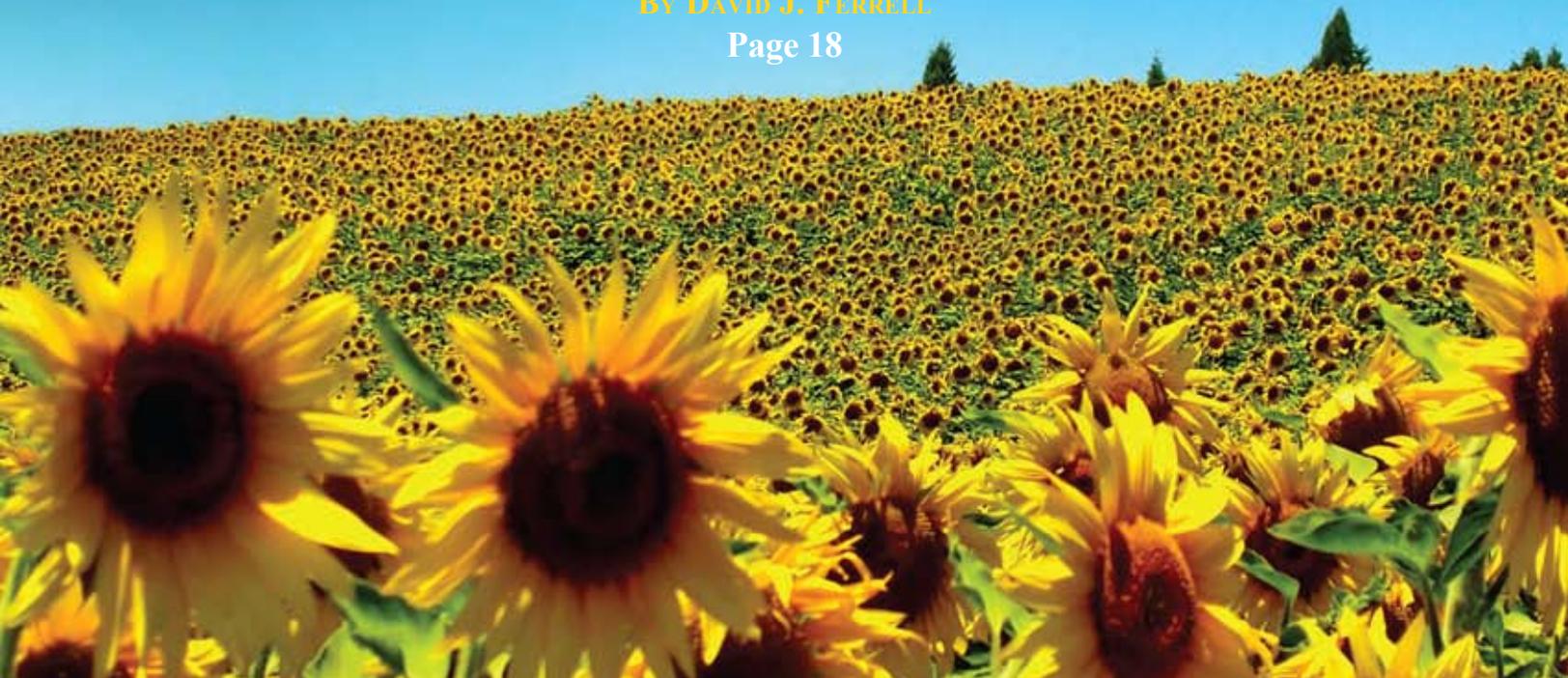
BY CLINTON F. CROSS

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Surprise – Who is Tracking You
(Besides NSA)? And How to Stop It

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El Paso Bar Association
Labor & Employment Section

Brown Bag Luncheon Seminar

The Latest Developments In Labor and Employment Law

Thursday, June 4, 2015, 12:30 – 2:30 p.m.

Ceremonial Courtroom, 12th Floor, El Paso County Courthouse

FREE, approved for 2.0 hours of MCLE

Topics:

- Top 10 Most Interesting and Useful Employment Cases in the Last Year. *Gerald Howard, Kemp Smith*
- To “tweet” or Not to “tweet”: Implications of Social Media in the Workplace. *Diana Macias Valdez, Law Office of Diana Macias Valdez, PLLC*
- Same Sex Marriage and Emerging LGBT Issues in the Workplace. *John Collins and Blake Downey, ScottHulse, P.C.*
- Plaintiffs’ Panel: Best Trial Practices, Including Pre-trial and Post-trial
 - John Wenke, Law Offices of John Wenke
 - Lynn Coyle, Law Office of Lynn Coyle, PLLC
 - Lisa Elizondo, The Law Office of Lisa Elizondo, PLLC

If you would like to pre-register, contact Nancy at ngallego.epba@sbcglobal.net

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FEDERAL COURT PRACTICE SEMINAR

Wednesday, June 10, 2015

Albert Armendariz, Sr. U.S. Courthouse

Jury Assembly Room, 2nd Floor

12:00 – 5:00 p.m.

Approved for 4.0 hours of MCLE, including 1.0 hour of Ethics

\$115 for current FBA Members

\$215 for non-FBA Members

RSVP by Monday, June 8th to Kristin Kimmelman at 534-6525

or at kristinkimmelman@gmail.com



State Bar of Texas Awards
 Award of Merit
 Star of Achievement
 Outstanding Partnership Award
 Outstanding Newsletter
 Publication Achievement Award
 NABE LexisNexis Awards
 Community & Education Outreach Award
 -2007, 2010 & 2012
 Excellence in Web Design – 2007
 Excellence in Special Publications – 2008

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The El Paso Bar Journal is a bi-monthly publication of the El Paso Bar Association. Articles, notices, suggestions and/or comments should be sent to the attention of Nancy Gallego. All submissions must be received by the Bar office on or before the 10th day of the month preceding publication. Calendar listings, classified ads, display ads, and feature articles should not be considered an endorsement of any service, product, program, seminar or event. Please contact the Bar office for ad rates. Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.

PRESIDENT'S PAGE



I have been privileged to highlight some of the best lawyers in El Paso through this President's Page. Highlighting one or two of our most talented lawyers each month means there are many that have gone without mention.

This month I would like to talk about our business and transactional lawyers who handle real estate transactions, create business entities and resolve conflicts between parties when disputes and complex issues arise. Much of this work involves substantive knowledge of business and administrative law that

most trial lawyers do not even begin to understand.

I highlight these lawyers in part to introduce Myer Lipson, the new President of the El Paso Bar Association. Myer is joined by many other very competent El Paso lawyers practicing in this area, such as Mike and Frank Ainsa, Steve Anderson, David Bernard, Joyhn Birkelbach, Bernanrd Felsen, Robert Feuille, Guy Fields, Robert Gibson, Risher Gilbert, Michael Ginnings, Allan Goldfarb, Merton Goldman, Patrick Gordon, Tim Johnson, Jay Kerr, Rodolfo Mata, Hector Phillips, Clyde Pine, Ernesto Pineda and Patrick Wolf.

I personally want to recognize and thank John Boomer, General Counsel for El Paso Electric. He is a brilliant lawyer. I also appreciate him as a human being since he also saved me last year from being mugged in downtown El Paso.

Back to Myer Lipson. Myer has spent the last four years on the executive committee of the El Paso Bar Association. He has been an excellent member of the executive team—participating in the business of the Association and working on policies and organizational matters—and he has also supported the various activities of the organization including the Access to Justice Clinic and the Veteran's Clinic. Myer is an excellent business and transactional law attorney who epitomizes the talent within our bar, but he will also be a great bar president. We are fortunate to have Myer serving the Bar Association and becoming its leader next year. Our community is profoundly better because of the expertise and experience Myer and other business lawyers share with their clients in and around El Paso.

I chose to move to El Paso to practice law even though I had offers to practice in other cities at the time of my law school graduation. I was motivated to accept employment in El Paso because of the caliber of lawyers I had dealt with in El Paso as a law clerk, attending hearings, taking or defending depositions or working on trials. I believe that many of the gems in our profession live and reside in El Paso. I will always be proud to be a member of the El Paso Bar Association. I will always be grateful for the opportunity that I have had to lead this organization. I thank everyone for a great bar year.

And remember, for all of your legal needs, hire the best, hire an El Paso lawyer.

LAURA ENRIQUEZ,

President

EL PASO BAR ASSOCIATION
June Bar Luncheon
 Tuesday, June 9, 2015

El Paso Club • 201 E. Main, 18th Floor,
 Chase Bank - cost \$20 per person, 12:00 Noon

Election and Swearing In of 2015-2016

Officers and Directors

Officers:

Myer Lipson – President
 Chris Antcliff – President-Elect
 Mark Dore – Vice President
 Jennifer Vandebosch – Treasurer
 Daniel Hernandez – Secretary

Board of Directors (1 year term)

Danny Razo

Board of Directors (3 year term)

Jessica Kludt
 Charles Ruhmann
 Jed Unterker
 Bill Hicks
 Judge Laura Strathman

Door prizes will be given out

Please make your reservations

by **Monday, June 8, 2015 at 1:00 p.m.**

at nancy@elpasobar.com or ngallego.epba@sbcglobal.net

Please make sure you RSVP.

**STATE BAR
 OF TEXAS AWARDS**

The El Paso Bar Association will receive the
 Award of Merit at the State Bar of Texas Annual
 Meeting on June 18, 2015 in San Antonio, Texas.

The award will be presented during the Bar
 Leaders Recognition Luncheon.

EL PASO BAR ASSOCIATION

2015-2016

Membership Dues Statements

have been mailed out and should be returned
 to our office by July 1, 2015.

UPCOMING HOLIDAYS:

Friday, June 19, 2015 – *Juneteenth Day*
 Saturday, July 4, 2015 – Independence Day

CALENDAR OF EVENTS

JUNE, 2015

Tuesday, June 2

EPBA BOD Meeting

Thursday, June 4

Labor & Employment
 Law Seminar. FREE

Tuesday, June 9

EPBA Monthly Luncheon Election
 and Swearing In Of Officers/Directors for
 2015-2016 Bar Year

Wednesday, June 10

EPCLSA Monthly Meeting

Thursday, June 18

EPPA Monthly Luncheon

Friday, June 19

Juneteenth Day – EPBA Office Closed

Have a great summer!!!!

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Magna Carta and the Surprising Survival of Jury Trial

Part III

BY JOSHUA TATE

Like the constitutional protection for civil jury trials, the right to a jury in criminal cases traces its origin to an important development in 1215. In the case of criminal trials, however, the protection came about not because of Magna Carta, but because of the Fourth Lateran Council.

Unlike disputes over land and rights of patronage, which involved some of the most important barons in the realm, criminal cases generally involved men and women on the lowest rung of society. The king wanted to make sure that criminals were punished, usually by execution or exile. However, it was not worth expending much effort or resources to try criminal defendants. Prior to 1215, therefore, the default mechanism of resolving criminal cases was through the ordeals.

An example of a typical medieval ordeal was the so-called ordeal of hot iron. The hand of the defendant was burned and bandaged. A few days later, the hand would be inspected to determine whether the wound had become infected. If the wound was infected, the accused person would be declared guilty. If not, the accused was declared innocent, and his life would be spared, although he would still be exiled from the realm.

Medieval people were not stupid. Although they did not have our knowledge of biology and the causes of infection, they knew that robbers and thieves were no more likely to suffer infection when their hands were burned. Why did they accept these ordeals as valid? The

answer is that the ordeals were supervised by priests who sought divine intervention to ensure that the guilty were punished and the innocent were spared. Medieval Englishmen believed in the power of the priests to invoke God's blessing, and they believed in miracles. If a defendant subjected to the ordeal of hot iron was innocent, they believed God would perform a miracle and preserve his hand from infection.

Another ordeal was called the ordeal of cold water. It involved dunking the defendant into a river, lake, or other body of water. If he sank, that meant the water was receiving him with God's blessing and he was innocent. If he floated, he was guilty. It does not take a rocket scientist to figure out that whether a body floats or sinks in water is not a matter of conscience. Nevertheless, the priestly blessing legitimized the procedure.

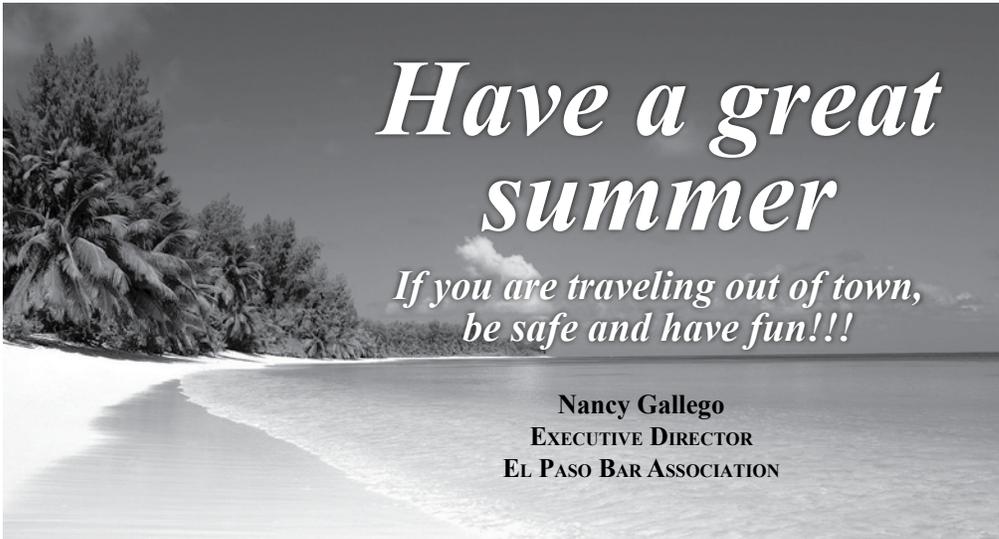
The system of criminal justice based on the ordeals was suddenly rendered useless in 1215, when Pope Innocent III pronounced at the Fourth Lateran Council that priests would no longer be allowed to participate in the ordeals. The early thirteenth century was a time when the great universities of Europe were rediscovering Greek philosophy and other branches of ancient knowledge. The ordeals seemed to be a leftover from a more barbaric age, not suited to the learning of the age. Accordingly, the church disassociated itself from the ordeals.

The Fourth Lateran Council presented an urgent and massive practical problem all over

Western Europe. How would defendants be tried in criminal cases, when God's blessing could not be sought for the ordeals? The English courts were not sure what to do, but a practice developed of asking the defendant how he wished to be tried. If he responded, "By God and the Country," he pressed with heavy weights until he relented or was killed. This was referred to as "*peine forte et dure*." Some defendants actually agreed to this torture in order to preserve their land from being forfeit to the state. However, the vast majority of defendants agreed to be tried by a jury.

In conclusion, trial by jury became the default mechanism for resolving criminal cases thanks to a change in canon law. As we have previously seen, however, civil jury trial is a legacy of Magna Carta. The historical association of trial by jury with the rule of law helps to explain its place in the U.S. Constitution. Whether jury trial is good or bad is not a question that can easily be answered. In order to understand the institution of jury trial, however, it is essential to understand the history, which all begins with Magna Carta and the story of a bad king who was forced to accept the rule of law.

JOSHUA C. TATE is an Associate Professor of Law at Southern Methodist University Dedman School of Law. He is a graduate of Pomona College, the University of Cambridge, and Yale University. He is Honorary Secretary and Treasurer of the Seldon Society in America.



*Have a great
summer*

*If you are traveling out of town,
be safe and have fun!!!*

Nancy Gallego
EXECUTIVE DIRECTOR
EL PASO BAR ASSOCIATION

**SAVE THE
DATE!!!!**

**20th Annual Civil
Trial Practice Seminar**

February 11, 12 & 13, 2016
Mirage Hotel & Resort
Las Vegas, Nevada



The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Legal Traditions

Part 3: The Scotch-Irish, Born Fighting

Republished with permission from the Winter, 2014 issue of the Journal of the Texas Supreme Court Historical Society.

BY DAVID A. FURLOW

In two previous parts of this article, published on the Internet in the Fall 2013 and Summer 2014 issues of the Journal of the Texas Supreme Court Historical Society (and republished with permission in the last two issues of this Journal), we examined the first two of the three competing legal traditions that shaped Texas law during the Republic—the Castilian influence that came to Texas through Spain and Mexico¹ and the planter-elite culture that Stephen F. Austin and his colonists brought from the Tidewater South.²

This final installment analyzes a third influence on the constitution and case law of early Texas—the fiercely independent, frequently violent, and usually clannish Scotch-Irish culture.³ They introduced ideas of natural liberty, low taxes, severely limited government, and pro-debtor legislation to Texas. We'll examine several men of Scotch-Irish background who wove the contending, competing traditions of Castilian/Tejano, Tidewater Chesapeake, and Southern Back Country culture into the fabric of Texas jurisprudence. The cultural origins of the Republic's lawmakers help explain the mindset, constitutional ideals, and decisions of Sam Houston, Thomas Jefferson Rusk, and John Hemphill.

Scotch-Irish legal traditions blended with other legal traditions to create a unique Texas culture.

America preserves a variety of contending cultures. If you want to see the way cultures shape societies and frame choices, go out for a meal. If you sit down in San Antonio's *Mi*

Tierra restaurant, you can toss back shots of *Monte Alban* Agave Mezcal con Gusano, order *chiles rellenos* and *tres leches*, gaze on fading photos of Pancho Villa, and hear *Feliz Navidad* play every Christmas season.

Go to the Williamsburg Inn's Regency Room in Virginia's former capital and you'll breakfast on steak and eggs, snack on stuffed Chesapeake crabs, listen to a spirited rendition of *The World Turned Upside Down* (the tune Lord Cornwallis's drum and fife corps played when they surrendered at Yorktown), and drink mint juleps beneath Neoclassical columns.

Stop by the Loveless Café in Nashville and you'll enjoy a Country Western experience. After a day watching NASCAR races, you may sip *Jack Daniel's No. 7 Tennessee Whiskey* on a dog-trot porch, dine on fried catfish, pass the cornbread, and listen to the Grand Ole Opry before retiring to a featherbed.

Transmitted from parent to child, lover to lover, spouse to spouse, and teacher to student over the generations, foodways, music, and architecture are social inheritances as long-lasting as regional accents. As *New Yorker* staff journalist and author Malcolm Gladwell observed,

Cultural legacies are powerful forces. They have deep roots and long lives. They persist, generation after generation, virtually intact, even as the economic and social and demographic conditions that spawned them have vanished, and they play such a role in directing attitudes and behavior that we cannot make sense of the world without them.⁴

Cultures encompass more than food, drink, music, and architecture, however. They include ways of creating order, attitudes toward authority, and ideas about liberty and restraint. Reproduced through child-rearing, religious institutions, education, work, rules, regulations, and codes, every society creates a legal culture and passes it down the generations.⁵

To understand how cultures shape expectations, foster institutions, and administer justice, Malcolm Gladwell states that “you have to go back into the past—and not just one or two generations...[but] two or three hundred years, to a country on the other side of the ocean, and look closely at what exactly the people in a very specific geographic area...did for a living.”⁶

A mass migration of the Scotch-Irish travelled to America in the seventeenth and eighteenth centuries.

In 1773, Dr. Samuel Johnson noted how emigrants to America retained their traditional folkways:

Whole [Border Country] neighborhoods formed parties for removal; so that departure from their native country is no longer exile. He that goes thus accompanied, sits down in a better climate, surrounded by his kindred and friends; they carry with them their language, their popular songs, and hereditary merriment: they change nothing but the place of their abode.⁷

As they moved their families from the

Atlantic seaboard to the Appalachians, the emigrants' Border Country ways turned into the American South's Back Country traditions.⁸

Scotch-Irish traditions of honor, violence, and vengeance infused Britain's Border Country, America's Southern Back Country, and Texas.

Where crops grow poorly, people are impoverished, and property is threatened, codes of honor that embrace strength, violence, and vengeance often arise. Malcolm Gladwell offers a valuable insight:

If you live on some rocky mountainside, the explanation goes, you can't farm. You probably raise goats or sheep, and the kind of culture that grows up around being a herdsman is very different from the culture that grows up around growing crops.

The survival of a farmer depends on the cooperation of others in the community. But a herdsman is off by himself. Farmers also don't have to worry that their livelihood will be stolen in the night, because crops can't be easily stolen unless... a thief wants to... harvest[] an entire field on his own. But a herdsman... [is] under constant threat of ruin through the loss of his animals. So he has to be aggressive: he has to... be willing to fight in response to even the slightest challenge to his honor—and that's what a "culture of honor" means....⁹

Carrying Border Country cattle-ranching and cattle-reiving folkways with them, Scotch-Irish settlers brought cows from England, Scotland, and Northern Ireland, including "Celtic," long-horned Kerry cattle, and took them to Appalachia, Alabama, and Arkansas.¹⁰ In Texas, they bred their cows with the native Spanish stock to produce Longhorns and to recreate a culture of honor among the *vaqueros*, cowboys, ranchers, rustlers, and Rangers of the Lone Star Republic.¹¹

How did a culture of honor arise in Texas, as it had in the British Border Country and in America's Southern Highland (Appalachian) Back Country?

It was because of where the original inhabitants of that region came from. The so-called American [B]ack [C]ountry states—from the Pennsylvania border south and west through Virginia and West Virginia, Kentucky and Tennessee, North Carolina and South Carolina, and the

northern end of Alabama and Georgia—were settled overwhelmingly by immigrants from one of the world's most ferocious cultures of honor. They were "Scotch-Irish"... from the lowlands of Scotland, the northern counties of England, and Ulster in Northern Ireland.¹²

The [British Border Country consisted of]... remote and lawless territories ... fought over for hundreds of years. The people of the region were steeped in violence. They were herdsman, scraping out a living on rocky and infertile land. They were clannish, responding to the harshness and turmoil of their environment by forming tight family bonds and placing loyalty to blood above else. And when they immigrated to North America, they moved into the American interior, to remote, lawless, and marginally fertile places... that allowed them to reproduce in the New World the culture of honor they had created in the Old World.¹³

Sociological studies show that America's Scotch-Irish immigrants exulted honor, violence, and vengeance far more than their English, German, Dutch, and Scandinavian neighbors.¹⁴

The pugnacious, self-reliant Scotch-Irish settlers who came to Texas recognized an informal system of retributive justice in which each individual acted as an armed guard of his financial, familial, and other interests.¹⁵ They continued feuding and seeking retributive justice, *lex talionis*, that started in Britain's Border Country, and continued in America. The feud between the Hatfields and McCoys, for example, began as a dispute over two razorback hogs but resulted in twenty deaths.¹⁶ Similar feuds, including the chaotic Regulator-Moderator War, erupted in east Texas during the Republic.¹⁷ Texas's first appointed chief justice, Scotch-Irish James Collinworth challenged Anson Jones, the Republic's last president, to "fight with pistols at ten steps," but settled the dispute after Jones agreed to battle it out.¹⁸

Judges who acted in accord with Scotch-Irish tradition placed more emphasis on punishing crimes against property than crimes of violence.¹⁹ That pattern has persisted for two centuries in Texas,²⁰ where "the criminal codes of the state of Texas regarded casual killing as a relatively minor crime, drawing two to twenty years,"²¹ while "horse theft logically had to be punished

by death."²² Texas's Scotch-Irish immigrants shared a shoot-now-and-ask-questions-later veneration of violence with their Border Country forbears and Back Country ancestors. This tradition reflected an Anglo-American culture distinctly different from the Virginia Tidewater ideals of a chivalric, aristocratic "Southern Gentleman" society that arrived in 1820s Texas when Stephen F. Austin settled Texas with Tidewater plantation owners.²³

Scotch-Irish politicians and judges shaped Texas's legal culture.

Sometimes disparaged in Britain as "the Scum of the Earth," "Rednecks," and—in America—as "Hillbillies," "White Trash (in modern times, "Trailer Park Trash") and "Crackers," a wave of rough and ready Scotch-Irish settlers overflowed into Texas in the 1820s, 1830s, and 1840s.²⁴ They were the last phase of a decades spanning migration of a quarter million largely poor farmers and laborers from the British Border Country that began in the seventeenth century and ended in the eighteenth.²⁵ As Texas historian T. R. Fehrenbach observed,

This immigration into Texas was part of the expansion of the South itself; it was not an expansion out of the adjacent states of Louisiana or Arkansas, but by families who leapfrogged from Alabama or Tennessee. One-half the white population came from these two states, Alabama and Tennessee.

These settlers largely came from the hill and forest regions, not from the plantation south; they were "red-necks" or yeoman farmers who went entirely into the prairie and post-oak regions far up the Texas rivers. They wanted to get away from the slave plantations, with which they could not compete; they could most easily acquire land on the far edge of settlement, and there was, noticeably, in these people an urge toward the far frontier²⁶

Lumping together early nineteenth century white settlers as "Anglos" ignores the conflicting cultural traditions that gave rise to two very different legal cultures.

Border Country dialects carried Scotch-Irish culture into Southern Back Country speech and Texas talk.

As Malcolm Gladwell notes, "[w]hatever

mechanism passes on speech patterns probably passes on behavioral and emotional patterns as well.²⁷ Many Southerners who came to Texas in the nineteenth century shared a distinctive regional dialect known as “Scotch-Irish speech.” Still heard in the Appalachians and Ozarks, the lower Mississippi Valley, and the Southern Plains to this day, this Southern dialect connected the Southern Highland Back Country Scotch-Irish with their Border Country ancestors.²⁸

Southern Back Country speech used *whar* for where, *thar* for there, *hard* for hired as in *hard hand*, *critter* for creature, *deef* instead of deaf (the name of the San Jacinto Scout is pronounced *Deef* Smith rather than Deaf Smith), *pizen* for poison, *nekkid* for naked, *widder* for widow, and *young-uns* for young ones.²⁹ The Border Country’s cadenced lilt and Appalachia’s rough Back Country accents echo in the Country Western sound of Clint Black and Reba McEntire, the humor of Larry the Cable Guy, the violence in Clint Eastwood’s *The Outlaw Josie Wales*, and the exuberance of Slim Pickens’s character Major “King” Kong in *Dr. Strangelove*.

Hostility toward “foreigners” characterized Border Country, Back Country, and Texas attitudes.

To Border Country immigrants and their Scotch-Irish elite descendants in America (the “Ascendancy” in nineteenth century parlance),³⁰ “the word foreigner...[was] used ...in its Elizabethan sense of someone who is the same nationality as the speaker, but not from the speaker’s immediate area.”³¹ The result was a xenophobic outlook hostile to the “Other” throughout American history: first and foremost toward Native Americans; then to Virginia and Massachusetts economic elites; then to Parliament, and King George III; later, to Spaniards, Mexicans, and Tejanos; later still, to Africans, freed slaves, Yankees, Jews, and northern intellectuals—none of whom were cultural “kith and kin” with Scotch-Irish settlers:

The people of the southern highlands would become famous in the nineteenth century for the intensity of their xenophobia, and also for the violence of its expression. In the early nineteenth century, they tended to detest great planters and abolitionists in equal measure. During the Civil war some fought against both sides. In the early twentieth century they would become

intensely negrophobic and antisemitic. In our own time they are furiously hostile to both communists and capitalists. The people of the southern highlands have been remarkably even-handed in their antipathies—which they have applied to all strangers without regard to race, religion or nationality.³²

In the Border Country, the Back Country, and Texas, fear of the “Other” was always great.

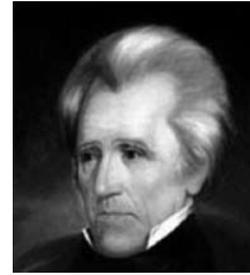
Distrust of banks, creditors, and big government characterized Scotch-Irish culture in the Border Country, Back Country, and Texas.

As a rule, individuals who exemplified the British Border Country, Southern Back Country, and Republic Texas opposed governing authority not when it was *close*, e.g., inside their clan or a local justice court. But they chafed when governments raised taxes, loomed large, or governed from a distance, whether the capitol was in London, Williamsburg, Washington, D.C., Mexico City, Saltillo, or Austin.³³ President Andrew Jackson, for example, shut down Nicholas Biddle’s Second Bank of the United States for the same reasons his Border Country ancestors would have shuttered the Bank of England.³⁴

Scotch-Irish military and political leaders shaped Southern Back Country and the Republic of Texas’s legal culture.

Like their ancestors in the violent, British Border Country and their forefathers in feud-riven Appalachia, Texas’ Scotch-Irish settlers of the 1820s, 1830s, and 1840s recreated a traditional culture of honor. They zealously defended their honor, punished property crimes more heavily than crimes of passion, waged relentless war on Indians (with a few exceptions such as Sam Houston), prayed fervently in Calvinist churches, viewed “foreigners” with hostility or suspicion (except for John Hemphill), and refused to accept restrictions on the natural liberty their war-chieftain leaders espoused.³⁵

The Scotch-Irish joined with Austin’s planter slavocracy to oppose the entry of “soulless corporations” into Texas, required a two-thirds vote of the House of Representatives to create any corporation, and flatly barred banks from incorporating.³⁶ The opposition of poor Scotch-Irish settlers and Austin’s slavocracy to taxes



Andrew Jackson,
Official White House
portrait by Ralph
E.W. Earl (1835)



Sam Houston as a
U.S. Senator

brought the Republic to near bankruptcy.³⁷

When Scotch-Irish, Southern Back Country settlers came to Texas in the nineteenth century, they followed rough-hewn leaders and chose judges eager to fight for their political, economic, and religious interests. Their elected officials and their judges played the same social role as the *thanes* (war chieftains) in the British Border Country:

The Calhouns, Polks, Jacksons, Henrys, Houstons, Bells, Grahams and Bankheads were typical of the [B]ack [C]ountry elite. The founders of these families in America had all been people of substance in North Britain These elite families firmly established their hegemony in the [B]ack [C]ountry before the American War of Independence³⁸

Southern Back Country notions of natural law, *lex taliensis* rough justice, fearlessness in battle, and fanatical commitment to individual liberty dominated Texas during the Republic.

The most prominent national leader of the Scotch-Irish in America, President Andrew Jackson, supported Texas’s drive for independence and annexation to the United States.³⁹ Like Andrew Jackson, Sam Houston favored greater constitutional guarantees than those in the U.S. Bill of Rights. Most of the Scotch-Irish settlers who came to Texas seeking free or cheap land were Jacksonian Democrats, who fervently sought to defend their newfound liberties because they had not fully participated in East Coast political institutions.⁴⁰ Houston and Jackson remained close personal friends through decades of war, peace, and politics.⁴¹

Houston shaped the Jacksonian nature of the Republic’s 1836 constitution and courts. He led the fifty-nine delegates who issued the Texas Declaration of Independence and promulgated its constitution at the March 1–2, 1836 Convention at Washington-on-the-Brazos.⁴² His

victory at San Jacinto transformed the dream of Texas independence into reality.⁴³ He won election as the Republic's first president in 1836 and won again in 1842, then served the Lone Star State as a U.S. senator and governor.⁴⁴

Born into a wealthy, prominent family in the Valley of Virginia on March 2, 1793, Sam Houston was proud of his Scotch-Irish ancestry.⁴⁵ His ancestor John Houston was a border baronet, a Border County chieftain.⁴⁶ He left the British Isles in 1730 with his family to sail to America carrying a chest of gold sovereigns.⁴⁷ When the ship's captain tried to steal that gold, John organized a mutiny, seized the ship, and took its passengers to build a new life in America. In Virginia, John Houston served as a judge, purchased vast tracts of fertile farming land in the Valley of Virginia, and won a prominent place for his descendants in North America.⁴⁸

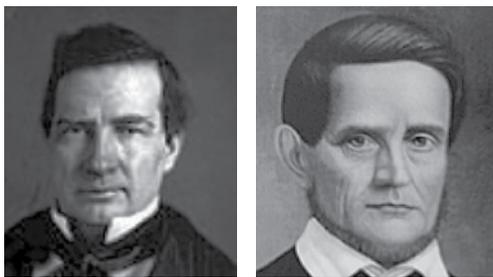
Sam's family moved him from Virginia's hilly back country to Tennessee's mountains in 1807. After nearly losing his life (and winning Andrew Jackson's life-long respect) in the Creek War, Houston began reading law in Nashville, opened a law firm and, with the support of Andrew Jackson, won appointment as Attorney General and election as Tennessee's governor.⁴⁹

When his first marriage dissolved, Sam Houston resigned the governorship and exiled himself from Tennessee.⁵⁰ He rejoined the Cherokee, and after three years, went to Texas with President Jackson's support.⁵¹ As a modern-day Scotch-Irish warrior-chieftain who rarely took counsel, his victory at San Jacinto proved his valor and military skill to the largely Back Country soldiers he commanded.⁵² Houston exercised a profound influence on Texas and American history as a protégé of Andrew Jackson, another self-made man of Scotch-Irish descent.⁵³

Two exemplars of Scotch-Irish, Presbyterian Back Country culture had a profound influence on the Texas Supreme Court's jurisprudence: Thomas Jefferson Rusk was the first chief justice to convene a session of the court, and John Hemphill became the "John Marshall of Texas"—the court's most important chief justice.

Thomas Jefferson Rusk was the first chief justice to preside over a session of the Republic's Supreme Court.

Born in a family of Scotch-Irish descent⁵⁴ in Pendleton District in South Carolina's Back Country on December 5, 1803, Thomas



Two Texas Supreme Court Chief Justices with a Scotch-Irish, Southern Back Country background: Thomas Jefferson Rusk (left), and John Hemphill at the age of 47 (right, a copy of the portrait in the Historic Texas Supreme Courtroom in the Texas State Capitol)

Jefferson Rusk taught himself law.⁵⁵ Rusk's father, John Rusk, was a Presbyterian born between 1750 and 1760 in Northern Ireland, where Covenanter Scotch-Irish settlers remained in continuous conflict with native Irish Catholics for centuries.⁵⁶ Arriving in South Carolina in 1791, John Rusk settled at Fort Hill Plantation in the Old Pendleton District, later home of John C. Calhoun and now of Clemson College. John founded the Old Stone Church, a Presbyterian ministry, where he is buried.⁵⁷

After being admitted to the bar in Georgia in 1825, Rusk moved to Clarksville, Georgia, where he practiced law. He also invested in a gold mine, hoping to use its profits to take care of his wife and seven children. After the men managing the gold mine absconded with the company's money in 1834, Rusk pursued them to Nacogdoches, Texas. But he soon learned that the embezzlers had gambled away the gold mine's money.⁵⁸

Sam Houston befriended Rusk in Nacogdoches and convinced him that Texas was a land of opportunity. When Rusk became a citizen of Mexico to continue living in Texas, Sam Houston served as a witness to Rusk's oath of allegiance.⁵⁹ Rusk won respect as Secretary of War during the Revolution and the Battle of San Jacinto, where he commanded the army after a musket ball severely wounded Sam Houston.⁶⁰

Adhering to the Scotch-Irish tradition of aggressive Indian-fighting, Rusk made war on Texas's Cherokee and Kickapoo Indians after Congress appointed him Secretary of War.⁶¹ Rusk alienated Houston when he joined in President Lamar's campaign to relocate and remove Cherokees. Rusk viewed Indians with the typical Scotch-Irish xenophobia toward "foreigners." Houston, in contrast, regarded Native Americans as his own kith and kin

because the Cherokees adopted him into their tribe.⁶² Great men of Scotch-Irish descent responded to the tradition of *kith* and *kin* family loyalty depending on their own life-experiences.

Rusk was elected Chief Justice of the Republic's supreme court in December 1838, but did not learn of his election until late January of 1839, after the scheduled session had been cancelled due to lack of a quorum. District Judges Anthony Shelby, W.J. Jones, John T. Mills, and John Hemphill served with Rusk on the first session of the court, which Rusk convened on January 13, 1840 in the home of Major Asa Brigham, the Treasurer of the Republic and, later, Mayor of Austin.⁶³ Chief Justice Rusk wrote five opinions.⁶⁴ In fulfillment of an agreement entered into with President Mirabeau B. Lamar before his appointment, Rusk resigned the chief justiceship in May 1840.⁶⁵

Rusk presided over the Convention of 1845 to draft Texas's state constitution, during which he successfully opposed the popular election of judges.⁶⁶ Following annexation, Texas voters elected Rusk to the U.S. Senate.

After his beloved wife's death and his discovery that he was suffering from a rapidly growing tumor, Rusk committed suicide in Nacogdoches on June 29, 1857, at the age of fifty-three.⁶⁷

Chief Justice Hemphill overcame his Scotch-Irish xenophobia to blend Anglo-American common law, Castilian civil jurisprudence, and Tidewater Chesapeake constitutionalism into the Republic's jurisprudence.

The Texas Supreme Court Historical Society honors its fourth chief justice at its annual banquet because no chief justice before or since has played a greater role in shaping the court's jurisprudence. Many historians refer to him as the John Marshall of Texas.⁶⁸

Hemphill was born into a Scotch-Irish family on December 18, 1803 in the hilly South Carolina Back Country near Chester.⁶⁹ He descended from a long line of Calvinist Presbyterian ministers, and traced his lineage back to Londonderry County in war-torn, Protestant Northern Ireland.⁷⁰ Hemphill's father, the Reverend John Hemphill, emigrated from County Tyrone, Ireland to the U.S. after the end of the Revolutionary War.⁷¹ Reverend Hemphill married Jane Lind, a woman of Scotch-Irish descent, daughter of a minister of the Associate Reformed Church in Pennsylvania, and

accepted the call to the ministry in Hopewell Church in Chester, South Carolina.⁷² Like most of the Scotch-Irish, the Hemphills were ardent Presbyterian Covenanters.⁷³

Hemphill attended a one-room school in Pennsylvania, enrolled in Monticello Academy, and then entered Jefferson College (now Washington and Jefferson College), a Presbyterian-sponsored, rural college in Pennsylvania.⁷⁴ After demonstrating “superior scholarship” and a gift for learning languages, Hemphill graduated second in his class.⁷⁵ He taught school in classical academies in South Carolina for several years, but aspired to become a lawyer.⁷⁶ In 1829, he began legal studies under David McCord, a prominent attorney in Columbia, South Carolina.⁷⁷ After graduating, he gained admission to Chancery Court and moved to Sumter, where he began a private practice serving Back Country clients, most of them Scotch-Irish.⁷⁸

In 1832 and 1833, Hemphill zealously defended slavery’s legitimacy, the right of states to nullify federal law, and a state’s right to secede from the Union.⁷⁹ He condemned *Southern Whig* editor Maynard Davis Richardson as an “apostate traitor, the recreant and faithless sentinel, the cringing parasite, the hollow-hearted, hypocritical advocate of Southern interests ... who [] scattered firebrands of destruction everywhere in the South,” merely because Richardson printed the record of the Virginia legislature’s 1832 debates about slavery in the *Inquirer*.⁸⁰ On January 26, 1833, Hemphill swore a solemn oath to “obey, execute and enforce the [South Carolina] Ordinance to Nullify certain Acts of the Congress of the United States”⁸¹

On August 28, 1833, Hemphill challenged South Carolina merchant Mordechai Levy to a battle of smoothbore pistols.⁸² A month later, at 5:30 PM on Friday, September 30, 1833, Hemphill and Levy exchanged shots at Carter’s Upper Mill.⁸³ Levy’s bullet smacked into Hemphill’s pistol hand, rendered his muzzle-loader inoperable, and left a scar on the hand that later authored Texas Supreme Court opinions.⁸⁴ The duel convinced his Hemphill’s Back Country friends that he was an “excellent skull-buster in a street fight” ready to fight to preserve his sacred Scotch-Irish honor.

A soldier in the Second Seminole War in Florida.

Consistent with his Jacksonian-era, Scotch-Irish veneration of military service, John Hemphill volunteered to help put down a

Seminole Indian uprising in northern Florida in 1836.⁸⁵ He tried to raise a company of militia volunteers in 1835, then joined the U.S. Army in South Carolina and took a steamboat to the front lines at St. Augustine, Florida.⁸⁶ Hemphill served as a lieutenant under Brevet General Abraham Eustis as a second lieutenant in the U.S. Army during the Seminole War of 1836–37 in northern Florida.⁸⁷

In Florida, Hemphill fell victim to malaria or Acute Infectious Hepatitis with Necrosis, leaving him with a severely impaired liver for the rest of his life.⁸⁸ On April 12, 1836, he received an honorable discharge.⁸⁹ Yet, while still in Florida or while convalescing in South Carolina, Hemphill also learned how President Andrew Jackson’s commander in chief, U.S. Army General Thomas Jesup, conducted Indian warfare.⁹⁰ On March 6, 1837, General Jesup compelled the leader of the Seminole resistance, Micanopy, to surrender and migrate west to Indian country, i.e., Oklahoma. When seven hundred Seminoles who had received Army food escaped on May 7, 1837, Jesup waited until they were enfeebled by hunger, then invited their leaders to parley, break bread, and drink with him. During the warrior Coacoochee’s parley under a flag of truce, General Jesup’s men seized the young Indian and sent him to *Castillo de San Marcos*, Spain’s seventeenth century citadel in St. Augustine, Florida.⁹¹

On October 25, 1837, General Jesup met with the Seminole Indian leader, Osceola, under the Seminoles’ white flag of truce in northern Florida. Jesup and two hundred and fifty of his soldiers then imprisoned Osceola, another seven warriors, six women, and four African-Americans fighting for their freedom.⁹² Osceola died in captivity several months later from an aggravated infection of the throat made worse by malaria. General Jesup treated Indian emissaries not as leaders of foreign nations entitled to diplomatic immunity but as outlaws.⁹³

Back in South Carolina, John Hemphill learned that Indians who did not surrender could be taken captive by soldiers flying the white flag of a peace parley. In 1836, Hemphill journeyed to St. Augustine, Florida. The *Castillo de San Marcos*, a massive, star-shaped Spanish fortress built between 1672 and 1682, dominated the city.⁹⁴ Since “[n]o visit to St. Augustine was complete without a stroll past the ageless battlements of the impressive guardian of the city and its harbor,” John Hemphill must have visited the *Castillo*, a reminder of the Spanish Empire’s lost glory, as

he waited for a steamboat to South Carolina.

Gone to Texas

Meanwhile, in 1836, tales of two other Spanish fortresses, the *Alamo* and *Goliad*, along with a battlefield known as *San Jacinto*, filled the headlines of newspapers in Florida, Georgia, and Hemphill’s native South Carolina. Hemphill’s thoughts must have turned westward at that time.

The 1836 migration to Texas of the related Scotch-Irish family of William and Lucretia Hemphill and their children may have led John Hemphill toward Texas. William’s accidental death in Mina (now Bastrop) Texas may have enabled John Hemphill to assert a survivor’s land grant under a colonization law of *Coahuila y Texas*.⁹⁵ Meanwhile, the Bank Panic of 1837 led impoverished Southerners, many of Scotch-Irish descent, to leave home in search of richer fields, forests, and pastures in the west. Those settlers often notified the relatives, friends, and creditors they left behind that they had gone to Texas by painting the initials “G.T.T.” on the homes and barns they abandoned.⁹⁶

In 1838, Hemphill left for Texas. Unlike the G.T.T. settlers pouring into Texas, Hemphill first paid his creditors before leaving home.⁹⁷ On September 10, 1838, Judge R. M. “Three-Legged Willie” Williamson licensed Hemphill to practice law in Texas.⁹⁸ Hemphill opened a law firm in Washington-on-the-Brazos that soon prospered.⁹⁹ Family tradition holds that Hemphill secluded himself to study Spanish and master the Castilian law that still governed Texas.¹⁰⁰ John Hemphill then moved to Bastrop, where his relative William Hemphill’s family had settled.¹⁰¹

Congress elects Hemphill to serve as a district judge in San Antonio.

John Hemphill advanced in public opinion and political influence during the term of Texas’s second president, Mirabeau B. Lamar.¹⁰² On January 21, 1840, Hemphill took the oath of office that made him a district judge of the Fourth Judicial District in San Antonio, qualifying him to act as an *ex officio* associate judge of the Texas Supreme Court.¹⁰³

As detailed in Part II of this three-part series, disaster ensued when District Judge John Hemphill—a South Carolinian who embodied the violent, vengeful, honor-based Southern Back Country culture—served as a mediator in San Antonio on March 19, 1840. Given the longstanding hostility between Scotch-Irish

settlers and Native Americans on the East Coast, in the Appalachians, in Alabama, and in Texas, Judge Hemphill was not an ideal mediator to negotiate a lasting peace with Comanches he thought of as ruthless savages.¹⁰⁴

Familiar with General Jesup's refusal to recognize the sacred status of Seminole peace negotiators in Florida, Judge Hemphill did not object to Texas Army Colonel Henry Karnes' refusal to recognize the ambassadorial status of Penateka Comanche war chief Muk-wah-ruh when he mediated the peace parley in San Antonio's Council House.¹⁰⁵ Conflicting understandings of the role of Comanche war chiefs at the 1840 Council House peace parley resulted in the failure of Judge Hemphill's mediation and the deaths of many Comanches and Anglo-American settlers.¹⁰⁶

Hemphill defends Texas from Indian warriors and Mexican raiders.

Despite his post-Florida ill health, Chief Justice Hemphill fought in several campaigns against Comanche and other Indian warriors, as well as Mexican raiders, in 1840 and 1841.¹⁰⁷ San Antonio Mayor Sam Maverick recorded how Hemphill joined with young Captain Jack Hays, who later became one of the most feared and respected of all Texas Rangers, to organize a company of mounted "minute man" volunteers to defend San Antonio while he served there as a district judge.¹⁰⁸

John Henry Brown recorded how Hemphill, Hays, and Judge James W. Robinson, who had recently recovered from a wound received at the Council House Fight, returned a five year old girl to the family from whom a Comanche war-band had abducted her. The little girl, who had forgotten the use of English during her captivity and had grown so "wild" that she had to be tied to the return-party's saddles every night, recognized her brother and sprang to his arms. Brown stated that, "Tears of joy mingled with audible sobs fell from three of the most distinguished men of Texas (Judge Hemphill, Judge Robinson, and John R. Cunningham)."¹⁰⁹

After Sam Houston returned to the presidency in December 1841, Hemphill accepted his appointment as Acting Adjutant General.¹¹⁰ When General Adrian Woll led a Mexican army to San Antonio in 1842, Hemphill advised Juan Seguin to arrest *Bexarenos* friendly to Mexico.¹¹¹ Hemphill's Council House Fight knife-fighting and service as Adjutant General meant he never again had to prove the physical courage and military experience Back Country

voters valued.

Congress elects Hemphill to serve as Chief Justice.

On December 5, 1840, Hemphill defeated a favored incumbent, James Webb, the former Attorney General of Texas to replace Rusk as Chief Justice of the Texas Supreme Court. Hemphill won by a narrow margin—two votes out of fifty-four cast—in both houses of Congress.¹¹² He served as Chief Justice for the remainder of the Republic era, with a brief stint as adjutant general of the Somervell expedition in 1842-43 when the court was not in session.¹¹³

Hemphill served Washington County as its delegate to the 1845 Convention charged with turning the Lone Star Republic into the Lone Star State. A strong proponent of Texas statehood, Hemphill chaired the Judiciary Committee.¹¹⁴ On July 11, 1845, Hemphill presented the annexation convention with a draft judiciary section for the new constitution, which largely accepted his proposals.¹¹⁵ In 1846, Texas Governor J. Pinckney Henderson appointed Hemphill chief justice of the state supreme court, which Texas's state senate soon approved.¹¹⁶

During the 1850s, growing differences about slaves brought northern and southern states closer and closer to a civil war. While Sam Houston remained a staunch Unionist, Hemphill—the South Carolina Secessionist—vigorously supported the right of Texans and other Southerners to secede.¹¹⁷ After eighteen years on the supreme court, first of the Republic and then of the Lone Star State, Hemphill resigned in November 1858 after Texas's senate elected him to replace Sam Houston as U.S. senator.¹¹⁸ Anson Jones, the Republic's last president, had hoped that the Legislature would choose him as Texas's new senator but failed to receive a single vote. Embittered by that humiliating defeat, Jones lamented Hemphill's election victory:

I think it is most unfortunate for the country—the South particularly—and for...Texas, as well as for the stability and perpetuity of the Union, that the Legislature of our State should have selected for her Senators in Congress two South Carolina Nullifiers [Hemphill and Louis Wigfall], and thus probably committed us to the extreme Southern fire-eating doctrines of the ultras...leading to...a dissolution of the Union and...an independent Southern

confederacy....¹¹⁹

On February 4, 1861, Texas's Secession Convention elected Hemphill to the Provisional Confederate Congress.¹²⁰ Hemphill took ill and died of pneumonia in Richmond, Virginia on January 4, 1862.¹²¹ His body lies in the State Cemetery in Austin.¹²²

The Hemphill court, influenced by a strong Scotch-Irish legal tradition, blended Texas's three legal traditions to benefit debtors, women, and people of color.

The prominence of the Scotch-Irish legal tradition in the Republic's supreme court helps explain why that court blended Castilian/*Tejano* customary law and construed Tidewater/Chesapeake statutes and constitutional provisions liberally in ways beneficial to the common man (and woman). For eighteen years, Chief Justice Hemphill led a court whose members acted in accord with the Scotch-Irish legal tradition.

Associate Judge John T. Mills served on the court from 1839 to 1846 as the judge of the Third, Seventh, and Eighth Judicial Districts, respectively. He was born in Scots-Irish County Antrim, Ireland on November 17, 1817. His family moved to Beaufort County, South Carolina, where they settled in that state's extensive immigrant Scotch-Irish community.¹²³ Associate Judge John Hanford, who served on the court from 1840-1842, was born in Glasgow, Kentucky, a town with a name that reflects its Scotch-Irish heritage.¹²⁴ Richardson A. Scurry, who served as an Associate Judge from 1840 to 1841, came from Gallatin, Tennessee, in the heart of the Scotch-Irish belt.¹²⁵ George Whitfield Terrell, an Associate Judge from 1803-1806, came from Nelson County, Kentucky, another Scotch-Irish Appalachian community.¹²⁶

Associate Justice Abner Lipscomb, who developed the jurisprudence of the Texas court after being appointed as an associate justice in March 1846, generally shared Hemphill's South Carolina birthplace and view of the world.¹²⁷ Like Rusk, Lipscomb read law with John C. Calhoun, a Southerner of Scotch-Irish ancestry who, through his theory that states had the right to nullify federal law within their own borders, heavily influenced Hemphill's and Lipscomb's jurisprudence.¹²⁸ Lipscomb served with Rusk and Hemphill in the Constitutional Convention of 1845 and then served on the court from 1846 through 1856.¹²⁹

The Hemphill court was important for

many reasons. *First*, Chief Justice Hemphill's scholarly judicial opinions enhanced the court's reputation as a citadel of frontier justice. He rose above Scotch-Irish provincialism to base his decisions on Texas's tradition of Castilian law when he found it to be just and persuasive.

In *Garrett v. Nash*, for example, he cited *El Diccionario do Legislaí* to analyze the effect of remarriage on a widow's inheritance from her previous husband's estate.¹³⁰ In *Smith v. Townsend*, he cited "such Spanish works as are within the reach of the Court...."¹³¹ And in *Thouvenin v. Rodriguez*, Hemphill analyzed Articles 96 and 98 of Decree 277 of the Laws of Coahuila and Texas, and Elements of Spanish Law, Titles XI and XII, *De la Contestacion and De la Citation*.¹³²

The Hemphill court's support of the Castilian tradition of using independent executors (the *albaceo universal*) to efficiently conduct probate cases and Castilian law's recognition of adoptions, neither of which were part of Anglo-American common law, became parts of Texas law.¹³³ The court retained the Castilian/Tejano idea that a defendant ought to enjoy the right to be sued where he or she lives, which has become the bedrock of Texas venue law.¹³⁴ And the court's respect for Spanish and Mexican land grants and Castilian water law, state ownership of riverine and subsea resources, and tidal boundaries provided Texas with a secure source of real property law. After Congress provided specific exceptions to Spanish civil law, Texas land law hybridized Castilian and AngloAmerican legal traditions.¹³⁵

Second, by transcending a traditional Scotch-Irish hostility toward "foreigners" while carrying out the Scotch-Irish tradition of protecting debtors from abusive creditors, Hemphill blended debtor-friendly Castilian traditions with Border Country/Southern Back Country distrust of arbitrary authority to safeguard a family's home, land, and personal property.¹³⁶

Lipscomb presented Section 22, the homestead exemption, to the 1845 Convention with Hemphill's ardent support.¹³⁷ As co-drafters of the Constitution of 1845, Chief Justice Hemphill and, after joining the bench in 1846, Associate Justice Lipscomb advanced Scotch-Irish notions of natural justice and enshrined them in the Constitution of 1845, through the drafting of written constitutional protections in the Tidewater Chesapeake legal tradition.¹³⁸ In *Sampson & Keene v. Williamson*,¹³⁹ *Wood v. Wheeler*,¹⁴⁰ *Cobbs v. Coleman*,¹⁴¹ *Shepherd v. Cassady*,¹⁴² and *Pryor v. Stone*,¹⁴³ the Hemphill

court expanded homestead rights and limited foreclosure to protect the property rights of immigrants living on the verge of bankruptcy on a violent frontier.¹⁴⁴

Third, the Hemphill court repeatedly encouraged adoption of the informal, unified pleadings that evolved in Tejano frontier society. The common man, whether Tejano, Scotch-Irish or otherwise, could understand simple pleadings. Simple pleadings limited the power of elites and eliminated archaic Anglo-American distinctions between common law and equity.¹⁴⁵

In *Pridgin v. Strickland*, Abner Lipscomb held that "neither the action of trover nor detinue is known to our forum, and that our petition...is more analogous to a bill in chancery or to a special action on the case than to any other forms known in other systems of jurisprudence."¹⁴⁶ As Chief Justice Hemphill explained, "the unmeaning fictions of the common law are abrogated, and facts only are to be alleged in the pleadings."¹⁴⁷ Texas's adoption of simple, unitary pleadings inspired other states and the federal judiciary to do the same.

Fourth, the Hemphill court's expansion of Castilian/Tejano community property marital rights offered women greater protection than contemporary Anglo-American common law.¹⁴⁸ By 1848, community property was so well established that Chief Justice John Hemphill ruled that a wife could seek "the delivery to her of her separate property and the one-half of the common property of the conjugal partnership" in *Wright v. Wright*.¹⁴⁹ In *Edward v. James*,¹⁵⁰ the Hemphill court recognized that a frontierswoman enjoyed the same rights as a frontiersman:

Again, can it be supposed that the government intended to reward only the male inhabitants of the frontier towns? Do not the women sustain the frontier with their toils, if not with their arms? Are they not subjected to the same, and to infinitely worse horrors from the hostilities of the savage foe?¹⁵¹

Because of Hemphill's rulings and the 1845 Constitution he helped draft, a spouse's community interest in marital property received constitutional and statutory protection.¹⁵²

Fifth, Chief Justice Hemphill moderated slavery's inhumanity to grant standing to slaves wishing to win or defend their freedom. In *Guess v. Lubbock*, the court ignored evidentiary deficiencies to substantively address an African-American's suit to prove her freedom.¹⁵³ In *Chandler v. State*, the court rejected a master's argument that slave-killing was outside judicial

jurisdiction because a master owned a slave.¹⁵⁴ And in *Moore v. Minerva*, the court reaffirmed the freedom of a slave who traveled to Texas after being freed in Ohio.¹⁵⁵ Judge Hemphill's liberality may reflect his little-appreciated familial relationship with an enslaved woman he bought, Sabina, and his love for their daughters, Theodora and Henrietta.¹⁵⁶

During the 1883 hanging of Hemphill's portrait, Chief Justice Asa Willie recounted how Chief Justice Hemphill shaped Texas law:

His ability as a judge was most fully developed when he found himself without precedent or authority for the questions under consideration. It was then that his capacity for profound and lucid reasoning was most fully displayed, and from his own luminous mind light was shed upon the subject of discussion which made the most abstruse points seem clearly elucidated to any mind.¹⁵⁷

His rulings and contributions to the 1845 Constitution reshaped Texas law in a way W.W. Boyce of South Carolina attributed to Hemphill's Scotch-Irish background:

His ancestors were ... from Scotland, and of a [Presbyterian] sect distinguished in Scottish history for their vehement devotion to duty, daring the anger of a bigoted king, and the dangers of the battlefield, rather than compromise, even in matters of form, that religious belief which they held dearer than property or life itself¹⁵⁸

Ultimately, Chief Justice Hemphill's greatest legacy is the unique and abiding jurisprudence he and his court wove together from the Castilian/Tejano tradition, Tidewater Virginia's constitutional rule of law, and the Scotch-Irish Jacksonian debtor-oriented, natural justice intended to protect one's liberty and safeguard one's *kith* and *kin* from oppression by creditors and the government alike.

Conclusion.

The political philosopher Georg Wilhelm Friedrich Hegel theorized that real change results when a social group's long experience with status quo ideas for addressing the challenges of life, the *thesis*, encourages opponents to negate that thesis with an *antithesis*. When *thesis* proponents negotiate successfully with *antithesis* advocates, their compromises create a *synthesis* better adapted to the world than either the original *thesis* or

its opposing *antithesis*. In the Republic, that political process resulted in a synthesis of pro-debtor Castilian law tempered by *Tejano* frontier experience; Tidewater Chesapeake concepts of hierarchical liberties enshrined in written constitutional guarantees; and Scotch-Irish sympathies for pioneers living violent, economically uncertain lives. That jurisprudential synthesis has transformed Texas and American law, order, and justice for the better.

Endnotes

1. David A. Furlow, *The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Traditions—Part 1: Material Differences in Legal Culture*, 3(1) TEX. SUP. CT. HIST. SOC. J. 9–22 (Fall 2013), available at http://www.texascourthistory.org/documents/TSCHS_Journal_Fall_2013.pdf (last visited Nov. 10, 2014).
2. David A. Furlow, *The Lone Star Republic's Supreme Court Wove the Fabric of Texas Law from the Threads of Three Competing Traditions—Part 2*, 3(4) TEX. SUP. CT. HIST. SOC. J. 28–34 (Summer 2014) (http://www.texascourthistory.org/documents/TSCHS_Journal_Summer_2014.pdf (last visited Nov. 13, 2014)).
3. As an ethnic group, the Scotch-Irish are frequently referred to as “Scots Irish” or as “Scot-Irish,” but the terms are interchangeable. See, e.g., JIM WEBB, *BORN FIGHTING: HOW THE SCOTS-IRISH SHAPED AMERICA* (New York: Broadway Books, 2005), 12–21 [hereinafter BORN FIGHTING]; MALCOLM GLADWELL, *OUTLIERS: THE STORY OF SUCCESS* (New York: Little, Brown & Co., 2008), 166–68 [hereinafter OUTLIERS]; DAVID HACKETT FISCHER, *ALBION'S SEED: FOUR BRITISH FOLKWAYS IN AMERICA* (New York: Oxford Univ. Press, 1989), 606–08, 618–21 [hereinafter ALBION'S SEED].
4. OUTLIERS, 175.
5. ALBION'S SEED, 9–10.
6. OUTLIERS, 170.
7. ALBION'S SEED, 605.
8. JON MEACHAM, *AMERICAN LION: ANDREW JACKSON IN THE WHITE HOUSE* (New York: Random House, 2009 paperback ed.), 44, 316, 324, 345 [hereinafter AMERICAN LION]; T.R. FEHRENBACH, *LONE STAR: A HISTORY OF TEXAS AND THE TEXANS* (Boston: Da Capo Press, 2000), 308; JAMES L. HALEY, *PASSIONATE NATION: THE EPIC HISTORY OF TEXAS* (New York: Free Press, 2006), 107–116, 129, 135, 148–152, 168, 181–84, 187, 202–207, 215–16, 233–49 [hereinafter PASSIONATE NATION]; RANDOLPH CAMPBELL, *GONE TO TEXAS: A HISTORY OF THE LONE STAR STATE* (New York: Oxford Univ. Press, 2003), 141 and 147–148 [hereinafter GONE TO TEXAS]; MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* (Lubbock: Tex. Tech. Univ. Press, 2011), 13–15 [hereinafter LONE STAR].
9. OUTLIERS, 166–67; ALBION'S SEED, 605–42.
10. Lisa Whalen, *A Rare Story Unfolds Daily*, 7(1) PLYMOUTH LIFE 16–23 (2008) (Plymouth Plantation's rare breed Kerry cattle); Grady McWhiney and Forrest McDonald, *Celtic Origins of Southern Herding Practices*, 51 J. Sou. Hist. 165–82 (1985) [hereinafter *Celtic Origins*]; DON WORCHESTER, *THE TEXAS LONGHORN: RELIC OF THE PAST, ASSET FOR THE FUTURE* (College

- Station: Tex. A & M Univ. Press, 1987), 3–46; J. FRANK DOBIE, *THE LONGHORNS* (Austin: Univ. of Tex. Press, 1980), vii–xvii, 3–68; FISCHER, ALBION'S SEED, 741–42. See generally TERRY G. JORDAN, *TRAILS TO TEXAS: SOUTHERN ROOTS OF WESTERN CATTLE RANCHING* (Lincoln: Univ. of Nebraska Press, 1981) [hereinafter TRAILS TO TEXAS].
11. ALBION'S SEED, 741–42; CELTIC ORIGINS, 51 J. Sou. Hist. 165–82; see generally TRAILS TO TEXAS.
12. OUTLIERS, 166–68; BORN FIGHTING, 1–184. Britain's Border Country included the bloody No Man's Land between England and Scotland and Northern Ireland's Ulster and Londonderry, where conflict between Irish Catholics and Presbyterian Scots continued for centuries. Border Country immigrants, mostly Calvinists, first came to America as indentured servants and Scottish prisoners of war in seventeenth century Virginia and Maryland. ALBION'S SEED, 605–07. In the eighteenth century, Border Country settlers emigrated to New England, New York, Delaware, Pennsylvania, and Maryland before moving southwest. *Id.*, 606, 633; BORN FIGHTING, 133–35. Mostly sailing in large clans between 1713 and 1774, they settled up-country in Virginia, the Carolinas, Georgia, and the Appalachians, then trekked through the South, Arkansas, and Missouri into Texas. ALBION'S SEED, 633–50, 655, 691–96, 633–50, 691–96, 741–53, and 758–65; BORN FIGHTING, 121–84. Militant Presbyterianism and tent-revival Baptist fundamentalism shaped their worlds. ALBION'S SEED, 703–08; LONE STAR, 323–24; ROBERT WUTHNOW, *ROUGH COUNTRY: HOW TEXAS BECAME AMERICA'S MOST POWERFUL BIBLE-BELT STATE* (Princeton: Princeton Univ. Press, 2014), 14–41. John C. Calhoun, Andrew Jackson, and Sam Houston led the Scotch-Irish into battle and in politics. ALBION'S SEED, 691–97; BORN FIGHTING, 200–87. The Scotch-Irish ate Southern Back Country cooking, played Border Country “Highland Games,” and wore an early version of Country Western clothing. ALBION'S SEED, 727–40. This Scotch-Irish cultural package came with them to Texas and remains a major influence here to this day.
13. BORN FIGHTING, 1 (quoting VERNON LOUIS PARRINGTON, *MAIN CURRENTS IN AMERICAN THOUGHT* (New York: Harcourt, Brace, & Co., 1927)). “Of the different racial strains that mingled their blood with the earlier English—Irish, Huguenot-French, German, Scotch-Irish—the last was by far the most important.... They were desperately poor; the available lands near the coast were already preempted; so armed with axes, their seed potatoes, and the newly invented rifle, they plunged into the backwoods.... A vigorous breed, hardy, assertive, individualistic, thrifty, trained in the democracy of the Scottish kirk, they were the

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- material out of which Jacksonian democracy was to be fashioned....”]; OUTLIERS, 166–69.
14. OUTLIERS, 168 (“[A] culture of honor helps to explain why the pattern of criminality in the American South has always been so distinctive. Murder rates are higher there than in the rest of the country. But crimes of property and ‘stranger’ crimes—like muggings—are lower.... In the [B]ack [C]ountry, violence wasn't for economic game. It was personal. You fought over your honor.”), 170–74 (studies and statistics).
15. ALBION'S SEED, 765–70; LONE STAR, 296–302; CLARENCE E. CARTER, *TERRITORIAL PAPERS OF THE U.S.* (Washington, D.C.: 27 vols., 1934–1969), vol. VI, 243–46, 268–69.
16. D. L. W. TOUGH, *THE LAST YEARS OF A FRONTIER: A HISTORY OF THE BORDERS DURING THE REIGN OF ELIZABETH* (Oxford: Oxford Univ. Press, 1928), 12–16, 117, 131, 156, 174, 180, 225; ALBION'S SEED, 765–71; FISCHER, ALBION'S SEED, 765–771. See generally OTIS K. RICE, *THE HATFIELDS AND THE MCCOYS* (Lexington: Univ. Press of Ky., 1978).
17. JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986* (Austin: Univ. of Texas Press, 2013), 25–30 (2013) [hereinafter NARRATIVE HISTORY]; LONE STAR LAW, 25–33; LONE STAR, 574–75.
18. Letter from Edward Morehouse to Anson Jones (Nov. 25, 1843), in ANSON JONES, *MEMORANDA AND OFFICIAL CORRESPONDENCE RELATING TO THE REPUBLIC OF TEXAS, ITS HISTORY AND ANNEXATION, 1836–1846* (New York: D. Appleton & Co., 1859; reprint, Chicago: Rio Grande Press, 1966), INCLUDING JONES' LETTERS, ETC., TO AND FROM ANSON JONES[,] MOSTLY OF A PUBLIC OR SEMI-OFFICIAL CHARACTER, FROM 1836 TO 1845, WITH MY ENDORSEMENTS AND NOTES AT THE TIME, letter from Edward Morehouse (Nov. 25, 1843) [hereinafter JONES OFFICIAL CORRESPONDENCE]; FISCHER, ALBION'S SEED, 768–69 (citing Edward M. Steel, “*Criminality in Jeffersonian America—A Sample*,” 18 CRIME AND DELINQUENCY 154 (1972) [hereinafter *Jeffersonian America*]).
19. ALBION'S SEED, 768–69 (citing *Jeffersonian America*, 18. CRIME AND DELINQUENCY at 154).
20. ALBION'S SEED, at 768; JOHN CHARLES CAMPBELL, *THE SOUTHERN HIGHLANDER AND HIS HOMELAND* (New York: Russell Sage Foundation, 1921), 119.
21. LONE STAR, 564.
22. *Id.*, 565.
23. *Id.*, 304–18.
24. See, e.g., Mackubin T. Owens, *Review of James Webb's Born Fighting: How the Scots-Irish Shaped America*, ASHBROOK UNIV. (Dec. 2004), available at [JUNE 2015](http://ashbrook.org/publications/oped-owens-04-

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- webb/ (last visited Nov. 24, 2014) ("Commenting on a statement that Howard Dean made during the Democratic primaries, Charles Krauthammer opined that Dean was campaigning for the 'white trash vote' by pandering to 'rebel-yell racist rednecks.'"); BORN FIGHTING, 133–34, 181–84; ALBION'S SEED, 732–35, 741–43, 747–53, 758–65; LONE STAR, 298–300.
25. ALBION'S SEED, 606–08, 618–21.
26. LONE STAR, 287.
27. OUTLIERS, 175, n.
28. ALBION'S SEED, 652–54. See generally HANS KURATH, *A WORD GEOGRAPHY OF THE EASTERN UNITED STATES* (Ann Arbor: Univ. of Mich. Press, 1949); CRAIG M. CARVER, *AMERICAN REGIONAL DIALECTS: A WORD GEOGRAPHY* (Ann Arbor: Univ. of Mich. Press, 1987), 1-20, 93-160, 225-31.
29. American Southern Back Country dialects played a major role in shaping Texas speech. See ALBION'S SEED, 652–54. Verbs included *she done finished, they growed up, he done did it and he don't have none*. *Id.*, 653. Scotch-Irish phrases that came to Texas include *fixin*, i.e., *getting ready to do something; man for husband* (as in *Tammy Wynette's Stand by Your Man*), *sparkin'* for courting; and *honey*, as a mark of "hibernian" (Irish and Scotch Irish) affection. *Id.*, 653, 653 n.6. Cf. E. BAGBY ATWOOD, *THE REGIONAL VOCABULARY OF TEXAS* (Austin: Univ. of Tex. Press, 1986), 67, 72 (widoe/widder), 115–16, 121, 241 (Map 11).
30. ALBION'S SEED, 642–50. In America, the Ascendancy comprised some of the most important Back Country clans, including the Bankheads, Bells, Calhouns, Grahams, Henrys, Houstons, and Jacksons. See ALBION'S SEED, 649.
31. ALBION'S SEED, 650; CARL BRIDENBAUGH, *MYTHS AND REALITIES, SOCIETIES OF THE COLONIAL SOUTH* (Baton Rouge: Praeger Press, 1952), 183; Wylene P. Dial, *The Dialect of the Appalachian People*, 30 West Va. Hist. 463–71 (1960) [hereinafter *Appalachian People*].
32. Albion's Seed, 650; *Appalachian People*, 30 W. Va. Hist., 463–71.
33. ALBION'S SEED, 650, 747–58. As the citizens of Mecklenberg County, North Carolina publicly declared in 1768, "We shall ever be ready to support the government under which we find the most liberty." *Id.*, 777; LONE STAR, at 287; NORRIS W. PREYER, HEZEKIA ALEXANDER AND THE REVOLUTION IN THE BACKCOUNTRY (1987), 66.
34. ALBION'S SEED, 849.
35. ALBION'S SEED, at 821–23, 889 ("In 1982, the murder rate in the nation as a whole 9.1 per 100,000.... The southern highlands and the southwestern states had extremely high murder rates—14.7 in the west south central states and 16.1 in Texas."), 890–98.
36. LONE STAR LAW, 18 24–25.
37. LONE STAR, 25; PASSIONATE NATION, 97, 102, 113, 191, 151, 30.
38. ALBION'S SEED, 648.
39. AMERICAN LION, 44, 316, 324, 345; LONE STAR, 190–215, 308; PASSIONATE NATION, 107–16, 129, 135, 145–68, 181–84, 187, 202–07, 215–16, 233–49.
40. LONE STAR, 239–302; James C. Harrington, *Framing a Texas Bill of Rights Argument*, 24 ST. MARY'S L. J. 399, 402 (1993); Arvel (Rod) Ponton III, *Sources of Liberty in the Texas Bill of Rights*, 20 ST. MARY'S L. J. 93, 96–97 (1988); Joseph W. McKnight, *Stephen Austin's Legalistic Concerns*, 89 SW. HIST. Q. 240, 265 (1986); J. E. Ericson, *Origins of the Texas Bill of Rights*, 62 SW. HIST. Q. 457–59, 461, 466 (1959); Rupert N. Richardson, *Framing the Constitution of the Republic*, 31 SW. HIST. Q. 191, 209–14 (1928).
41. AMERICAN LION, 44, 316, 324, 345; LONE STAR, 223–24; 237–39, 247–51; ALBION'S SEED, 642–44.
42. JOURNALS OF THE CONVENTION OF THE FREE, SOVEREIGN, AND INDEPENDENT PEOPLE OF TEXAS, IN GENERAL CONVENTION ASSEMBLED (March 1, 1836), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897* (Gammel Book Co. 1898), 1063; GONE TO TEXAS, 141 and 147–48; LONE STAR LAW, 13–15; PASSIONATE NATION, 148–52.
43. STEPHEN L. MOORE, *EIGHTEEN MINUTES: THE BATTLE OF SAN JACINTO AND THE TEXAS INDEPENDENCE CAMPAIGN* (Dallas: Republic of Tex. Press 2004), 309-428 [hereinafter *EIGHTEEN MINUTES*]; CAMPBELL, *GONE TO TEXAS*, 148-58; LONE STAR LAW, 15–21; NARRATIVE HISTORY, 17–52.
44. Thomas H. Kreneck, *Houston, Samuel*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fho73> (last visited Nov. 16, 2014) [hereinafter *Houston*]; GONE TO TEXAS, 159–61; LONE STAR, 246–54; NARRATIVE HISTORY, 17; PASSIONATE NATION, 206–16.
45. JAMES C. LEYBURN, *THE SCOTCH-IRISH: A SOCIAL HISTORY* (1962), 200–10, 306 [hereinafter *SOCIAL HISTORY*].
46. Sam Houston's ancestor referred to himself as "John Houston, Gent." to reflect his status as a man of substance. See also ALBION'S SEED, 648–49; J. SOCIAL HISTORY, 91.
47. ALBION'S SEED, 648–49.
48. MARQUIS JAMES, *THE RAVEN: A BIOGRAPHY OF SAM HOUSTON* (New York: Bobbs Merrill Co., 1929) [hereinafter *RAVEN*]; ALBION'S SEED, 648.
49. *Houston*.
50. ALBION'S SEED, 648 (Houston's Border Country background).
51. LONE STAR, 182.
52. LONE STAR, 222–24, 229–54.
53. ALBION'S SEED, 648.
54. See Hon. Joe Greenhill, *The Early Supreme Court of Texas and Some of Its Justices*, 62 TEX. B. J. 646, 646-47 (1999).
55. See Priscilla Myers Benham, *Rusk, Thomas Jefferson*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fru16> (last visited Nov. 17, 2014) [hereinafter *Thomas Jefferson Rusk*]; Aragon Storm Miller, *Rusk, John Cleveland*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fru46> (last visited Nov. 17, 2014) [hereinafter *John Cleveland Rusk*]; David A. Furlow, *Ten Myths and Legends of Texas Law*, ST. BAR OF TEX. PROF. DEV. PROGRAM, 9TH ANN. ADV'D INHOUSE COUNSEL COURSE, ch. 6, 8 [hereinafter *Ten Myths and Legends*].
56. See *Thomas Jefferson Rusk; John Cleveland Rusk*.
57. See NAT'L REG. INFO. SYS., I, 2009-03-13, http://en.wikipedia.org/wiki/Old_Stone_Church_and_Cemetery#mediaviewer/File:Old_Stone_Church (last visited Nov. 14, 2014); FREDERICK C. HOLDER, *HISTORIC SITES OF OCONEE COUNTY, S.C.* (Charleston: Oconee Cty. Hist. Soc., 2nd ed., 1991), 40–41.
58. Gerald White, *The Almost Forgotten Pass in Review: Thomas Rusk*, MARCH 2 TEXAS (Aug. 31, 2013), <http://march2texas.com/thealmost-forgotten-pass-in-review-thomas-rusk/> (citing *Thomas Jefferson Rusk*).
59. *Thomas Jefferson Rusk*.
60. *EIGHTEEN MINUTES*, 77–79, 95–97, 101–111, 118–19, 248–368; *GONE TO TEXAS*, 148, 167–69.
61. Dabney, *A Historical Trilogy*, 37 HOU. LAW., 5; *GONE TO TEXAS*, 162.
62. JAMES L. HALEY, *SAM HOUSTON* (Norman: Univ. of Okla. Press, 2002), 8–10, 64, 108–12, 118, 164, 191, 203–06, 215, 256, 271; HALEY, *NARRATIVE HISTORY*, 20, 24, 47–48, 86, 262 n. 18, and 268 n. 38; JAMES, *THE RAVEN*, 20–21, 127, 151, 228, 309; ARIENS, *LONE STAR LAW*, 16.
63. Dylan O. Drummond, *Dallam's Digest and the Unofficial First Reporter of the Supreme Court of Texas*, 3(3) J. TEX. SUP. CT. HIST. SOC., Spring 2013, 8; 1 Year Book for Texas 96–97 (1902); NARRATIVE HISTORY, 20–27, 34–35.
64. *Thomas Jefferson Rusk*; LONE STAR LAW, 23–24; *GONE TO TEXAS*, 162.
65. NARRATIVE HISTORY, 34–36, 235, Jim Paulsen, *A Short History of the Texas Supreme Court*, 65 TEX. L. REV. 237, 241 (1986) [hereinafter *Short History*].
66. *Short History*, 65 TEX. L. REV., 253.
67. *Id.*; *Thomas Jefferson Rusk; Rusk, Thomas Jefferson*, Bio. Dir'y of U.S. Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=r000518> (last visited Feb. 3, 2013). See generally MARY CLARKE, *THOMAS J. RUSK: SOLDIER, STATESMAN, JURIST* (Austin: Jenkins Pub. Co., 1971).
68. *Ten Myths and Legends*, 8.
69. TIMOTHY S. HUEBNER, *THE SOUTHERN JUDICIAL TRADITION: STATE JUDGES AND SECTIONAL DISTINCTIVENESS, 1790-1890* (Athens, Ga.: Univ. of Ga. Press, 1999), 100 [hereinafter *JUDICIAL TRADITION*]; ROSALEE MORRIS CURTIS, *JOHN HEMPHILL: FIRST CHIEF JUSTICE OF THE STATE OF TEXAS* (Woodstock, Ga.: Rosalee Curtis, rev'd ed., 1997), 1–2 [hereinafter *FIRST CHIEF JUSTICE*].
70. *FIRST CHIEF JUSTICE*, 1; YOUR DICTIONARY, JOHN HEMPHILL FACTS, <http://biography.yourdictionary.com/john-hemphill> (last visited Sept. 13, 2014) [hereinafter *Hemphill Facts*].
71. *FIRST CHIEF JUSTICE*, 1.
72. *Id.*; *Hemphill Facts*.
73. *FIRST CHIEF JUSTICE*, 1–9.
74. *FIRST CHIEF JUSTICE*, 11–12; TARLTON L. LIB., JAMAIL CTR. FOR LEG. RES., JUSTICES OF TEXAS 1836–1986: JOHN HEMPHILL (1803–1862), <http://tarlton.law.utexas.edu/justices/profile/view/50> (last visited Jan. 30, 2014) [JOHN HEMPHILL]; *Ten Myths and Legends*, 8. See generally SOUTH CAROLINIAN LIBRARY, UNIVERSITY OF SOUTH CAROLINA, JOHN HEMPHILL PAPERS. Sources differ about whether John Hemphill graduated in 1823, 1825, or 1826.
75. *JUDICIAL TRADITION*, 100; *Ten Myths and Legends*, 8.
76. JOHN HEMPHILL.

77. FIRST CHIEF JUSTICE, 13; *Hemphill Facts*.
78. *Hemphill Facts*; Thomas W. Cutrer, *Hemphill, John*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/fhe13> (last visited Feb. 4, 2013) [hereinafter *Hemphill, John*].
79. FIRST CHIEF JUSTICE, 15–17.
80. JUDICIAL TRADITION, 101.
81. FIRST CHIEF JUSTICE, 15.
82. *Hemphill Facts*.
83. FIRST CHIEF JUSTICE, 18–19.
84. *Id.*, 19.
85. FIRST CHIEF JUSTICE, 20–24, 86; TEXAS STATE CEMETERY, JOHN HEMPHILL, Plot 59, http://www.cemetery.state.tx.us/pub/user_form.asp?pers_id=59 (last visited October 6, 2014).
86. JUDICIAL TRADITION, 102; *Hemphill Facts*.
87. *Hemphill Facts*.
88. FIRST CHIEF JUSTICE, 21.
89. HEMPHILL PAPERS (containing John Hemphill's Certification of Honorable Discharge).
90. *Id.*, 19–21.
91. MICHAEL GANNON, *THE NEW HISTORY OF FLORIDA* (Gainesville: Univ. Press of Fla. 1996), 195 [hereinafter *NEW HISTORY*]; JAMES W. COVINGTON, *THE SEMINOLES OF FLORIDA* (Gainesville: Univ. Press of Fla. 1993), 72–109 [SEMINOLES].
92. SEMINOLES, 93.
93. *NEW HISTORY*, 195.
94. LOUIS RAFAEL ARANA & ALBERT MANUCY, *THE HISTORY OF CASTILLO DE SAN MARCOS* (St. Augustine, Fla.: reprint, Historic Map & Print Co., 2005), 19–25, 55–57 [hereinafter *CASTILLO DE SAN MARCOS*]. The Castillo was the “most notable structure [in Florida] to survive from Spanish times.” See T. D. ALLMAN, *FINDING FLORIDA: THE TRUE HISTORY OF THE SUNSHINE STATE* (New York: Atlantic Monthly Press, 2013), 45 [hereinafter *FINDING FLORIDA*].
95. FIRST CHIEF JUSTICE, 24–26.
96. FIRST CHIEF JUSTICE, 26.
97. *Id.*, 21.
98. *Id.*, 26.
99. FIRST CHIEF JUSTICE, 29; JUDICIAL TRADITION, 103; *Hemphill Facts*.
100. JUDICIAL TRADITION, 103; FIRST CHIEF JUSTICE, 27–28.
101. FIRST CHIEF JUSTICE, 29.
102. *Id.*, 28–30.
103. *Myths and Legends*, 8; FIRST CHIEF JUSTICE, 31.
104. *FINDING FLORIDA*, 45; *ALBION'S SEED*, 639.
105. S.C. GWYNNE, *EMPIRE OF THE SUMMER MOON: QUANAH PARKER AND THE RISE AND FALL OF THE COMANCHES, THE MOST POWERFUL INDIAN TRIBE IN AMERICAN HISTORY* (New York: Simon & Schuster, 2010), 82–88, 326–27 (2011) [hereinafter *SUMMER MOON*]; DORMAN WINFREY AND JAMES M. DAY (eds.), *I THE INDIAN PAPERS OF TEXAS AND THE SOUTHWEST* (Austin: Pemberton Press, 5 vols., 1956–66), 11, 105 (containing Document 948, Mirabeau B. Lamar's December 21, 1838 “Messages of the President, Submitted to both Houses”); *LONE STAR*, 254–55; *Ten Myths and Legends*, 8–9.
106. *SUMMER MOON*, 85–86. 39
107. *Id.*; First Chief Justice, 35–38, 40–43.
108. FIRST CHIEF JUSTICE, 35–36.
109. *Id.*, 36–37. See also JOHN HENRY BROWN, *HISTORY OF TEXAS* (Austin: L.E. Daniell, 1892), vol. 2, 51–53.
110. JUDICIAL TRADITION, 103.
111. JESUS F. DE LA TEJA (ed.), JUAN SEGUIN, A REVOLUTION REMEMBERED: THE MEMOIRS AND SELECTED CORRESPONDENCE OF JUAN N. SEGUIN (Austin: Tex. St. Hist. Ass'n., 2002), 94.
112. FIRST CHIEF JUSTICE, 39.
113. JUDICIAL TRADITION, 103.
114. FIRST CHIEF JUSTICE, 52–55.
115. *LONE STAR LAW*, 23.
116. See *id.*, 57–58.
117. *Id.*, 79–82.
118. See *id.*, 73–78.
119. JONES OFFICIAL CORRESPONDENCE, 643 (containing the letter from Anson Jones to John G. Todd, Nov. 17, 1857; emphasis in original letter).
120. *Hemphill, John*. See also MARY BOYKIN CHESNUT, A DIARY FROM DIXIE, AS WRITTEN BY MARY BOYKIN CHESNUT, WIFE OF JAMES CHESNUT, JR., UNITED STATES SENATOR FROM SOUTH CAROLINA, 1859–1861..., <http://docsouth.unc.edu/southlit/chesnut/maryches.html> (last visited Apr. 12, 2014).
121. FIRST CHIEF JUSTICE, 86.
122. *Id.*, 90–91.
123. TARLTON L. LIB., JAMAIL CTR. FOR LEG. RES., JUSTICES OF TEXAS 1836–1986: JOHN T. MILLS (1817–1871), <http://tarlton.law.utexas.edu/justices/profile/view/70> (last visited Dec. 11, 2014).
124. TARLTON L. LIB., JAMAIL CTR. FOR LEG. RES., JUSTICES OF TEXAS 1836–1986: JOHN M. HANSFORD (?–1844), <http://tarlton.law.utexas.edu/justices/profile/view/46> (last visited Dec. 11, 2014).
125. TARLTON L. LIB., JAMAIL CTR. FOR LEG. RES., JUSTICES OF TEXAS 1836–1986: RICHARDSON A. SCURRY (1811–1862), <http://tarlton.law.utexas.edu/justices/profile/view/94> (last visited Dec. 11, 2014).
126. TARLTON L. LIB., JAMAIL CTR. FOR LEG. RES., JUSTICES OF TEXAS 1836–1986: GEORGE WHITFIELD TERRELL (1803–1846), <http://tarlton.law.utexas.edu/justices/profile/view/107> (last visited Dec. 11, 2014).
127. *NARRATIVE HISTORY*, 54–62, 237.
128. See, e.g., *Cocke v. Calkin & Co.*, 1 Tex. 542, 554 (1846); cf. *McCulloch v. Maryland*, 4 Wheat (17 U.S.) 316 (1819). See generally *LONE STAR LAW*, 25–26.
129. *NARRATIVE HISTORY*, 54–56, 59–60, 62, 73, 103, 264 nn. 7, 13 and 19; *Lone Star Law*, 24–26.
130. *Dallam* 497, 498–501 (Tex. 1843).
131. *Dallam* 569 (Tex. 1844).
132. 24 Tex. 468 (1859).
133. See *id.*, 1–2.
134. *Spanish Law*.
135. See, e.g., *Smith v. Dunlavy*, 31 Tex. 693, (Tex. 1869).
136. Act of Jan. 26, 1839, 3rd Cong., Repub. Tex., reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, 125 (Gammel Book Co. 1898); Decree 70, of Jan. 13, 1829, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, 220 (Gammel Book Co. 1898) (Mexican debtor-protection reform); Decree 173 of Apr. 8, 1831, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, 289 (Gammel Book Co. 1898); Act of Feb. 5, 1840, 4th Cong., Repub. Tex., reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, 267 (Gammel Book Co. 1898); *HALEY*, *NARRATIVE HISTORY*, 36–42, 56–57.
137. FIRST CHIEF JUSTICE, 55.
138. *NARRATIVE HISTORY*, 57; Joseph W. McKnight, *Homestead Law*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/mlh02> (last visited Sept. 19, 2014).
139. 6 Tex. 102 (1851); see also *LONE STAR LAW*, 26, 290 n.5; *NARRATIVE HISTORY*, 56; Paul Goodman, *The Emergence of Homestead Exemption in the United States: Accommodation and Resistance to the Market Revolution, 1840 to 1880*, 80 J. AM. HIST. 470, 470, 496 (1993). 140 7 Tex. 19 (1851). See also *LONE STAR LAW*, 26, 290 n.5.
141. 14 Tex. 594 (1855).
142. 20 Tex. 24, 29–30 (1857).
143. 19 Tex. 371 (1857); *LONE STAR LAW*, 26, 290 n.5.
144. *NARRATIVE HISTORY*, 1–3; FIRST CHIEF JUSTICE, 55, 58, 64, 66–67. The provisions Judge Hemphill preserved remain in the Texas constitution, including Article XVI, Sections 15 (community property) and 50 (homestead exemption).
145. *Smith v. Dunlavy*, 31 Tex. 693 (Tex. 1869).
146. 8 Tex. 427, *6 (Tex. 1852).
147. *Garrett v. Gaines*, 6 Tex. 435, *8 (Tex. 1851).
148. *NARRATIVE HISTORY*, 1–4, 58–60. See generally Joseph W. McKnight, *Spanish Concepts in Texas Law of the Family, Succession, and Civil Procedure*, ST. BAR OF TEX., *THE INFLUENCE OF SPAIN ON THE TEXAS LEGAL SYSTEM* (Austin: State Bar, 1992).
149. 3 Tex. 168, 172 (Tex. 1848).
150. 7 Tex. 372, 380 (Tex. 1851).
151. *Id.*, 382.
152. See, e.g., *Hemphill, John*; Joseph W. McKnight, *Spanish Law*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/iss01> (last visited Feb. 4, 2013) [hereinafter *Spanish Law*]; Joseph W. McKnight, *Community Property Law*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/iss02> (last visited Feb. 24, 2014); McKnight, *Separate Property Law*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/mls01> (last visited Sept. 14, 2014); Tex. Const. art. XVI, § 15. See generally WILLIAM O. HUIE, *THE COMMUNITY PROPERTY LAW OF TEXAS* (1960).
153. 5 Tex. 525 (1851). See also *Narrative History*, 61–62; Mark Davidson, *One Woman's Fight for Freedom*, 45 *HOU. LAW.* 10, 10–15 (Jan.–Feb. 2008), available at http://www.thehoustonlawyer.com/aa_jan08/page10.htm (last visited Dec. 8, 2014), 10–15, reprinted in RANDOLPH CAMPBELL (ed.) (William S. Pugsley & Marilyn Duncan, comps.), *LAW OF SLAVERY IN TEXAS* (Austin: Univ. of Tex. Press, 2010), 87–93.
154. 2 Tex. 305, 309 (1847). See also *Nix v. State*, 13 Tex. 575 (1855).
155. 17 Tex. 539 (1856). See also *LONE STAR LAW*, 31, 290–91 n.64.
156. *NARRATIVE HISTORY*, 59–60 (citing the Deposition of Richard Rust (July 1, 1871) in *Theodora Hemphill v. James Hemphill*, Cause No. 3074, Travis Cnty., Tex. (June 1871)).
157. 59 *Texas Reports*.
158. CURTISS, FIRST CHIEF JUSTICE, 87; RICHMOND ENQUIRER (Jan. 10, 1862)

SPOTLIGHT ON AN EL PASO LAWYER

LEILA SAFI HOBSON

BY CLINTON F. CROSS

I recently interviewed Leila Hobson in her office at 4110 Rio Bravo. Leila is licensed in Texas and New Mexico and is board certified in estate planning and probate law. She has been listed for many years in "Best Lawyers in America" in the specialty of trusts and estates and designated by "Texas Monthly" as a "Texas Super Lawyer" in Estate Planning/Trusts.

CROSS: Tell me about your parents.

HOBSON: My father was Sabre Safi, who died in 2005 at the age of 95. My mother is Sarah Haddad Safi. They were both born in a village in Syria, but they did not meet there.

When my father was 15, he left Syria and traveled by boat to Mexico to join two of his brothers who were already living and working there. He settled in Valles, Mexico and became a successful businessman. My mother and her family immigrated from Syria through Juarez to El Paso when she five years old. She attended the old Lamar school and graduated from El Paso High School in 1939.

During World War II my mother ran her brother's grocery store while he served in the army. After the war, she and some friends, one of whom was a Baptist missionary, drove to Mexico City and en route stopped in Valles for a day or two as it was on the road to Mexico City. My mother's brother-in-law had asked her to give his regards to his "Safi" cousins who lived in Valles, one of whom happened to be Sabre Safi. The minute my father met my mother, his heart skipped a beat (as did hers). My father proposed to my mother that evening at dinner and they got married five months later in El Paso at the Church of St Clement. They were married until my father passed away. For a short time, my parents lived in both Valles and El Paso. My family settled permanently in El Paso before I entered the first grade.

CROSS: Any siblings?

HOBSON: I am the oldest of my parents' four children. My sister is Tamara Safi, and my brothers are S. Anthony Safi and George Safi. My siblings and I all grew up here in El Paso and we all graduated from Austin High School.

CROSS: What did your brothers and sisters end up doing?

HOBSON: My sister Tammy got a degree in accounting from UTEP and spent most of her professional life working for the Maryland court system. Tony got his law degree from the University of Texas Law School and immediately went to work for the firm now known as Mounce, Green, Myers, Safi, Paxson & Galatzan. George and I went to the University of Texas Law School together. After graduation, George went to work for the general counsel's office of Exxon in Houston and he is still there.

CROSS: Where did you go to school?

HOBSON: After high school, I attended UTEP and got a Bachelor of Science in math and physics with a minor in education. My specialty in physics was geophysics and at one time I had considered becoming a geophysicist.

CROSS: Some lawyers I know became lawyers because they couldn't pass their math or science classes. How did you do in those classes?

HOBSON: I graduated from UTEP with a 4.0 average. I was told that I was the first person to do so at UTEP, but I do not know that for sure.

CROSS: Amazing. Then what?

HOBSON: I had to do a semester of student teaching as a requirement to complete my minor in education and I was assigned to El Paso High School. On my first day of student teaching, I taught a class in "related math" (math for high school students who were lacking in math skills) and a class in Algebra. To my surprise, I loved every minute of it!

At the end of the semester, the principal offered me a job and I took it notwithstanding that it had never been my plan to teach school. I taught all levels of high school math for another five or six years at El Paso and Coronado High Schools taking a year off to work on a Master's Degree at UT.

Some of my students at El Paso High are now lawyers who practice or have practiced in El Paso: Lina Ortega, Susan Strelitz, Laura Gordon, Dan Malone, David Nevarez, and Judge Sergio Enriquez. My students also included siblings of Jay Kerr, Bruce Koehler, Robert Pearson, and Steve Nickey; a son of Rickie Feuille; and both grandchildren of Jim Hulse.



Leila Safi Hobson

As much as I loved teaching, when I was in my late 20's, I realized that I had never intended to teach school and that if I ever wanted to do something else, now was the time to decide what it was that I would rather do. My brother Tony, who was in law school at that time, suggested that I go to law school. He told me that if I chose to go to law school, I probably could not get a job with a large firm in El Paso as at the time they were not hiring women. Nevertheless, he said, law school would be a wonderful educational experience. I took Tony's advice and applied and got in to the University of Texas Law School. I got my law degree in 1979.

CROSS: What did you do after you graduated?

HOBSON: After law school I became an associate at Scott-Hulse. I was the first women lawyer at the firm. While I was there I focused on three areas: estate planning and probate; residential real estate; and ERISA and retirement plans. At Scott-Hulse I learned how to practice law and I was very fortunate to have mentors like Rickie Feuille, Bill Thurmond, and Sam Moore. I became a partner at Scott-Hulse in 1985 and was there for almost 15 years.

CROSS: Was there a matter that you handled back then that you found especially interesting?

HOBSON: While I was at Scott-Hulse, I handled an interesting case that involved the retirement plan of a national conglomerate that had a large business in El Paso. There were several issues with regard to the retirement plan for the local business that I had been hired to handle and it involved dealing quite a bit with the IRS and the Department of Labor. On one of the issues, the way that a certain Internal Revenue Code statute was being interpreted by

the IRS was unfairly onerous for employers all over the country, including my client, and my client stood to bear a heavy financial loss because of it. I was able to convince the IRS agent assigned to our case of that unfairness and he agreed to pursue changing how the ruled was interpreted. The rule was eventually permanently changed, and everything worked out beautifully for my client.

CROSS: Then what after you left Scott-Hulse?

HOBSON: I became a partner at Mounce & Galatzan. While I was at Mounce & Galatzan I made the decision to limit my practice to only estate planning and probate.

In 1997 Mounce & Galatzan split into three different firms and Risher Gilbert, Tim Coffey and I formed Gilbert, Coffey & Hobson at that time. Bob Gilbert later joined our firm and we stayed together until Tim Coffey retired in 2005. After Tim retired, Bob and Risher formed the Gilbert Law Firm, and Stancy Stribling, Karin Carson and I formed Hobson, Stribling, & Carson. Stancy and Karin had both also been practicing in the area of estate planning and probate and it was exciting to form a firm focusing on that area of practice.

CROSS: During your career, have you participated in any Bar activities?

HOBSON: At one time, I served as a director of the El Paso Bar Association and worked on several of its committees. I served as president of the El Paso Women's Bar Association, and I have been a Trustee of the El Paso Bar Foundation. I was very active in the State Bar for many years. I was a member of the Women in the Profession Committee and also served as Vice Chair and Chair of that Committee. The purpose of the Committee was to address issues facing women practicing

law. I received a Presidential Citation from the President of the State Bar in 1996 for my work on that Committee. I was also a member for many years of the State Bar's Disciplinary Rules Committee, which was charged with amending the Texas disciplinary rules.

CROSS: Do you have children?

HOBSON: I have two daughters, Sarah Hobson Calfee and Christine Leigh Hobson, and three grandchildren, Leila, Ford, and Elliot Leigh. My children and grandchildren live in Austin. They are the light of my life.

When I had Sarah, I became the first woman lawyer in a large local law firm to have a baby; and when I had Christine, I was the first woman in a large law firm to have two.

CROSS: How did you do it?

HOBSON: I had to learn to be efficient and learn to prioritize. It is what every working mother has to do.

CROSS: At this time, you have a very successful practice in an estate planning law firm. How did you develop this practice?

HOBSON: Early on I was often asked to give talks on estate planning to various groups and did so quite a bit. It was a great opportunity to use the skills that I had developed as a teacher. People began to know who I was and what my area of practice was and this helped my practice grow. My law partners throughout the years who did not practice in my area of practice would refer their clients to me for estate planning and this also helped my practice grow. I would say that the great majority of my new clients have been referred to me by current clients.

CLINTON F. CROSS is a retired Assistant El Paso County Attorney.

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EL PASO PARALEGAL ASSOCIATION

June Membership Meeting

Thursday, June 18, 2015
El Paso Club, 201 E. Main,
18th Floor
12:00 noon

EL PASO COUNTY LEGAL SUPPORT ASSOCIATION

June Monthly Meeting

Wednesday, June 10, 2015

El Paso Club, 201
E. Main, 18th Floor
12:00 Noon

Guest Speaker: Nancy Gallego,
EXECUTIVE DIRECTOR OF THE
EL PASO BAR ASSOCIATION

Surprise – Who is Tracking You (Besides NSA)? And How to Stop It

BY DAVID J. FERRELL

Why are there so many “Freeware” programs and “Free Apps” available for us to download and use? Are they really free? Many of the tablet/phone free apps have what is called “in app purchasing”. They must disclose this before you download and install the app. The app developers hope you or your child get hooked on the program, and further use of the app is not FREE.

A more common use of freeware etc. gets its MONEY in some way with your personal information. That means the site is using the information it learns about you when you download/register with them to target you with ads or sell your information to other advertisers. Often your computer/tablet/smart phone registers you automatically when you accept the free stuff.

These FREE service/app providers can also monitor when you browse to target your preferences for future advertisements that meet what you like, and making future sales more likely.

Some of the services you actually pay for also take this approach to increase their cash flow. Few of us really want to publish our online habits and make them known to anyone, especially to those who will pay for that data, so AT&T’s GigaPower fiber Internet offers customers the option to not sell your searches and browsing history to advertisers.

Is this free? No, AT&T charges an extra \$29

more each month to protect your privacy. Smart phones are also tracked. Your cell phone data is sold to advertisers that send you targeted ads over their networks. Verizon and AT&T have experimented with “SUPERCOOKIES” that let any website know who you are when you visit. AT&T dropped the idea when customers complained, but Verizon still does it. You can opt out by signing into your account at <https://www.verizonwireless.com/myprivacy/>, but Verizon still adds the supercookies to your browsing, which can give away your identity to websites.

There are other ways your carrier and advertisers track you. Most other methods rely on your smartphone’s built in software. There are ways you can put a stop to that with a few easy changes.

Iphone

Go into Settings, then tap Privacy. Scroll all the way down to advertising. You will see a button labeled, “Limit ad tracking.” MAKE IT GREEN. If it’s not showing a green color, slide the button so that it shows green. This will stop ad companies from tracking what you do with your phone and serving up targeted ads. Right underneath that setting, by the way, you’ll see the “Reset Advertising Identifier.” Clicking on that will zero out the anonymized identifier linked to your personal data on Apple’s servers. What that means: to trackers you will appear to be a new user. This can make it more difficult - but not

impossible - for advertisers to build up a profile on how you browse.

Android

Turn off the new Google “AdID” system. Do not go to your Android phone settings, but your Google Settings app. Look under your full list of apps to find it. Tap the Ads link and then check “Opt out of interest-based ads.” You can also see your advertising ID and tap “Reset advertising ID” to make a new RANDOM one. This will make you look like a new user to advertisers. Ads are not the only way you are tracked on your phone. Google and Apple might be tracking your searches. Use the search app instead to make private searches.

Windows phone - internet Explorer for windows 8(x)

Microsoft does let you turn off Personalized ads in Windows Phone. Go to Microsoft’s ad opt-out page and under “Personalize ads whenever I use my Microsoft account” click “Off.” You will need to be signed in to your Windows account to do this. Make sure you sign in with the same account you use on your Windows Phone. This can also work for Internet Explorer in Windows 8.

DAVID FERRELL is an El Paso attorney specializing in probate and criminal law. He also assists law firms in development of their computer trial and law office technology. He serves on the WEB Services Committee of the State Bar of Texas



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Brothers David A. Hall and Teo D. Hall, ages 22 and 24



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